

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. GC 2011 114

~~ALFRED LEGRID APPLEGARTH~~
127 Casa Street
San Luis Obispo, CA 93401

Optometrist License No: 7714.

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 28, 2014.

It is so ORDERED April 28, 2014


FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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Attorneys for Complainant

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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC 2011 114

11 **ALFRED LEGRID APPLGARTH**
12 **127 Casa Street**
13 **San Luis Obispo, CA 93401**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Optometrist License No. 7714**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this matter
22 by Kamala D. Harris, Attorney General of the State of California, by Alvaro Mejia, Deputy
23 Attorney General.

24 2. Respondent Alfred Legrid Applegarth (Respondent) is represented in this proceeding
25 by attorney Raymond H. Allen, whose address is: Alton & Allen, Inc., 1310 Osos Street, San
26 Luis Obispo, CA 93401.

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1 3. On or about September 12, 1983, the State Board of Optometry issued Optometrist
2 License No. 7714 to Respondent Alfred Legrid Applegarth. The Optometrist License was in full
3 force and effect at all times relevant to the charges brought in Accusation No. CC 2011 114. The
4 license was set to expire on November 30, 2013.

5 **JURISDICTION**

6 4. Accusation No. CC 2011 114 was filed before the State Board of Optometry (Board),
7 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
8 and all other statutorily required documents were properly served on Respondent on April 10,
9 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. CC 2011 114 is attached as exhibit A and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. CC 2011 114. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. CC 2011 114.

4 10. Respondent agrees that his Optometrist License is subject to discipline and he agrees
5 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 RESERVATION

7 11. The admissions made by Respondent herein are only for the purposes of this
8 proceeding, or any other proceedings in which the State Board of Optometry or other professional
9 licensing agency is involved, and shall not be admissible in any other criminal or civil
10 proceeding.

11 CONTINGENCY

12 12. This stipulation shall be subject to approval by the State Board of Optometry.
13 Respondent understands and agrees that counsel for Complainant and the staff of the State Board
14 of Optometry may communicate directly with the Board regarding this stipulation and settlement,
15 without notice to or participation by Respondent or his counsel. By signing the stipulation,
16 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
17 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
18 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
19 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
20 the parties, and the Board shall not be disqualified from further action by having considered this
21 matter.

22 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

25 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 15. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following
5 Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Optometrist License No, 7714 issued to Respondent
8 Alfred Legrid Applegarth is revoked. However, the revocation is stayed and Respondent is
9 placed on probation for three (3) years on the following terms and conditions.

10 **SEVERABILITY CLAUSE**

11 Each condition of probation contained herein is a separate and distinct condition. If any
12 condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or
13 to any extent, the remainder of this Order and all other applicants thereof, shall not be affected.
14 Each condition of this Order shall separately be valid and enforceable to the fullest extent
15 permitted by law.

16 **UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES**

17 Pursuant to Business and Professions Code §315, the Uniform Standards for Substance-
18 Abusing Licensees (Uniform Standards) are applied throughout this order and shall be adhered to
19 throughout the entire term of probation.

20 **1. OBEY ALL LAWS**

21 Respondent shall obey all federal, state, and local laws, governing the practice of optometry
22 in California.

23 Respondent shall notify the Board in writing within 72 hours of any incident resulting in his
24 arrest, or charges filed against, or a citation issued against Respondent.

25 **CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any
26 governmental agency, including probation or parole, and the orders are violated, this shall be
27 deemed a violation of probation and may result in the filing of an accusation or petition to revoke
28 probation or both.

1 **OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to
2 any other disciplinary order from any other health-care related board or any professional licensing
3 or certification regulatory agency in California or elsewhere, and violates any of the orders or
4 conditions imposed by other agencies, this shall be deemed a violation of probation and may
5 result in the filing of an accusation or petition to revoke probation or both.

6 **2. QUARTERLY REPORTS**

7 Respondent shall file quarterly reports of compliance under penalty of perjury to the
8 probation monitor assigned by the Board. Quarterly report forms will be provided by the Board
9 (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports
10 shall constitute a violation of probation and shall result in the filing of an accusation and/or a
11 petition to revoke probation against Respondent's optometrist license. Respondent is responsible
12 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
13 year of probation throughout the entire length of probation as follows:

- 14 • For the period covering January 1st through March 31st, reports are to be completed and
15 submitted between April 1st and April 7th.
- 16 • For the period covering April 1st through June 30th, reports are to be completed and
17 submitted between July 1st and July 7th.
- 18 • For the period covering July 1st through September 30th, reports are to be completed and
19 submitted between October 1st and October 7th.
- 20 • For the period covering October 1st through December 31st, reports are to be completed
21 and submitted between January 1st and January 7th.

22 Failure to submit complete and timely reports shall constitute a violation of probation.

23 **3. COOPERATE WITH PROBATION MONITORING PROGRAM**

24 Respondent shall comply with the requirements of the Board's probation monitoring
25 program, and shall, upon reasonable request, report or personally appear as directed.

26 Respondent shall claim all certified mail issued by the Board, respond to all notices of
27 reasonable requests timely, and submit Reports, Identification Update reports or other reports
28 similar in nature, as requested and directed by the Board or its representative.

1 Respondent is encouraged to contact the Board's probation monitoring program
2 representative at any time he has a question or concern regarding his terms and conditions of
3 probation.

4 Failure to appear for any scheduled meeting or examination, or cooperate with the
5 requirements of the program, including timely submission of requested information, shall
6 constitute a violation of probation and may result in the filing of an accusation and/or a petition to
7 revoke probation against Respondent's Optometrist license.

8 4. PROBATION MONITORING COSTS

9 All costs incurred for probation monitoring during the entire probation shall be paid by the
10 Respondent. The monthly cost may be adjusted as expenses are reduced or increased.
11 Respondent's failure to comply with all terms and conditions may also cause this amount to be
12 increased.

13 All payments for costs are to be sent directly to the Board of Optometry and must be
14 received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs
15 incurred.)

16 If Respondent is unable to submit costs for any month, he shall be required, instead, to
17 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
18 submit the costs, including payment amount(s). Supporting documentation and evidence of why
19 the Respondent is unable to make such payment(s) must accompany this submission.

20 Respondent understands that failure to submit costs timely is a violation of probation and
21 submission of evidence demonstrating financial hardship does not preclude the Board from
22 pursuing further disciplinary action. However, Respondent understands that by providing
23 evidence and supporting documentation of financial hardship it may delay further disciplinary
24 action.

25 In addition to any other disciplinary action taken by the Board, an unrestricted license will
26 not be issued at the end of the probationary period and the optometrist license will not be
27 renewed, until such time as all probation monitoring costs have been paid.

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1 **5. FUNCTION AS AN OPTOMETRIST**

2 Respondent shall function as an optometrist for a minimum of 60 hours per month for the
3 entire term of his probation period.

4 **6. NOTICE TO EMPLOYER**

5 Respondent shall provide to the Board the names, physical addresses, mailing addresses,
6 and telephone number of all employers and supervisors and shall give specific, written consent
7 that the licensee authorizes the Board and the employers and supervisors to communicate
8 regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is
9 not limited to, any violation of any probationary term and condition.

10 Respondent shall be required to inform his employer, and each subsequent employer during
11 the probation period, of the discipline imposed by this decision by providing his supervisor and
12 director and all subsequent supervisors and directors with a copy of the decision and order, and
13 the accusation in this matter prior to the beginning of or returning to employment or within 14
14 calendar days from each change in a supervisor or director.

15 The Respondent must ensure that the Board receives written confirmation from the
16 employer that he is aware of the Discipline, on forms to be provided to the Respondent (DG-Form
17 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are
18 submitted from the employer directly to the Board. Respondent is responsible for contacting the
19 Board to obtain additional forms if needed.

20 **7. CHANGES OF EMPLOYMENT OR RESIDENCE**

21 Respondent shall notify the Board, and appointed probation monitor in writing, of any and
22 all changes of employment, location, and address within 14 calendar days of such change. This
23 includes but is not limited to applying for employment, termination or resignation from
24 employment; change in employment status, and change in supervisors, administrators or directors.

25 Respondent shall also notify his probation monitor AND the Board IN WRITING of any
26 changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for
27 mailing purposes; however the Respondent must also provide his physical residence address as
28 well.

1 **8. COST RECOVERY**

2 Respondent shall pay to the Board a sum not to exceed the costs of the investigation and
3 prosecution of this case. That sum shall be \$3,000.00 and shall be paid in full directly to the
4 Board, in a Board-approved payment plan, within 6 months before the end of the Probation term.
5 Cost recovery will not be tolled.

6 If Respondent is unable to submit costs timely, he shall be required instead to submit an
7 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will
8 be able to submit the costs, including payment amount(s). Supporting documentation and
9 evidence of why the Respondent is unable to make such payment(s) must accompany this
10 submission.

11 Respondent understands that failure to submit costs timely is a violation of probation and
12 submission of evidence demonstrating financial hardship does not preclude the Board from
13 pursuing further disciplinary action. However, Respondent understands that by providing
14 evidence and supporting documentation of financial hardship may delay further disciplinary
15 action.

16 Consideration to financial hardship will not be given should Respondent violate this term
17 and condition, unless an unexpected AND unavoidable hardship is established from the date of
18 this order to the date payment(s) is due.

19 **9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS**
20 **EXAMINATION**

21 Within 60 calendar days of the effective date of this decision, or within some other time as
22 prescribed in writing by the Board, Respondent shall take and pass the California Laws and
23 Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take
24 and pass a re-examination as approved by the Board. The waiting period between repeat
25 examinations shall be at six-month intervals until success is achieved. Respondent shall pay the
26 established examination fees.

27 If Respondent fails the first examination, Respondent shall immediately cease the practice
28 of optometry until the re-examination has been successfully passed; as evidenced by written

1 notice to Respondent from the Board.

2 If Respondent has not taken and passed the examination within six months from the
3 effective date of this decision, Respondent shall be considered to be in violation of probation.

4 **10. VALID LICENSE STATUS**

5 Respondent shall maintain a current, active and valid license for the length of the probation
6 period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall
7 constitute a violation of probation.

8 **11. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

9 Periods of residency or practice outside California, whether the periods of residency or
10 practice are temporary or permanent, will toll the probation period but will not toll the cost
11 recovery requirement, nor the probation monitoring costs incurred. Travel outside of California
12 for more than 30 calendar days must be reported to the Board in writing prior to departure.
13 Respondent shall notify the Board, in writing, within 14 calendar days, upon his return to
14 California and prior to the commencement of any employment where representation as an
15 optometrist is/was provided.

16 Respondent's license shall be automatically cancelled if Respondent's periods of temporary
17 or permanent residence or practice outside California total two years. However, Respondent's
18 license shall not be cancelled as long as Respondent is residing and practicing in another state of
19 the United States and is on active probation with the licensing authority of that state, in which
20 case the two year period shall begin on the date probation is completed or terminated in that state.

21 **12. LICENSE SURRENDER**

22 During Respondent's term of probation, if he ceases practicing due to retirement, health
23 reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender
24 his license to the Board. The Board reserves the right to evaluate Respondent's request and
25 exercise its discretion whether to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the
27 tendered license and wall certificate, Respondent will no longer be subject to the conditions of
28 probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon

1 reinstatement.

2 Surrender of Respondent's license shall be considered a Disciplinary Action and shall
3 become a part of Respondent's license history with the Board.

4 **13. VIOLATION OF PROBATION**

5 If Respondent violates any term of the probation in any respect, the Board, after giving
6 Respondent notice and the opportunity to be heard, may revoke probation and carry out the
7 disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed
8 against Respondent during probation, the Board shall have continuing jurisdiction and the period
9 of probation shall be extended until the matter is final. No petition for modification of discipline
10 shall be considered while there is an accusation or petition to revoke probation or other discipline
11 pending against Respondent.

12 **14. COMPLETION OF PROBATION**

13 Upon successful completion of probation, Respondent's license shall be fully restored.

14 **15. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE**

15 If Respondent sells or closes his office after the imposition of administrative discipline,
16 Respondent shall ensure the continuity of patient care and the transfer of patient records.
17 Respondent shall also ensure that patients are refunded money for work/services not completed or
18 provided, and shall not misrepresent to anyone the reason for the sale or closure of the office
19 and/or practice. The provisions of this condition in no way authorize the practice of optometry by
20 the Respondent during any period of license suspension.

21 **16. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL**

22 Respondent shall abstain completely from the use or possession of alcohol, any and all
23 other mood altering drugs or substances, and their associated paraphernalia. Respondent shall
24 identify for the Board, a single physician, nurse practitioner or physician assistant who shall be
25 aware of Respondent's history of substance abuse and will coordinate and monitor any
26 prescriptions for Respondent for dangerous drugs, controlled substances, or mood altering drugs.
27 The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on
28 a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length

1 of probation as follows:

2 • For the period covering January 1st through March 31st, reports are to be completed and
3 submitted between April 1st and April 7th.

4 • For the period covering April 1st through June 30th, reports are to be completed and
5 submitted between July 1st and July 7th.

6 • For the period covering July 1st through September 30th, reports are to be completed and
7 submitted between October 1st and October 7th.

8 • For the period covering October 1st through December 31st, reports are to be completed
9 and submitted between January 1st and January 7th.

10 The quarterly report shall include, but not be limited to:

- 11 1. the Respondent's name;
- 12 2. license number;
- 13 3. physician, nurse practitioner, or physician assistant's name and signature;
- 14 4. physician, nurse practitioner, or physician assistant's license number;
- 15 5. dates Respondent had face-to-face contact or correspondence (written and verbal)
16 with physician, nurse practitioner, or physician assistant;
- 17 6. the Respondent's compliance with this condition;
- 18 7. if any substances have been prescribed, identification of a program for the time-
19 limited use of any substances;
- 20 8. any change in behavior and/or personal habits;
- 21 9. assessment of the Respondent's ability to practice safely;
- 22 10. recommendation dependant on Respondent's progress and compliance with this
23 condition on whether to continue with current prescription plan and/or treatment, modify plan
24 and/or treatment, or require Respondent to cease practice;
- 25 11. other relevant information deemed necessary by the physician, nurse practitioner,
26 physician, or the Board.

27 Respondent is ultimately responsible for ensuring his physician, nurse practitioner or
28 physician assistant submits complete and timely reports. Failure to ensure each submission of
complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician
assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing
records as well as physical and mental health medical records. Respondent shall also provide
information of treating physicians, counselors or any other treating professional as requested by
the Board.

1 Respondent shall ensure that he is not in the presence of or in the same physical location as
2 individuals who are using illegal substances, even if Respondent is not personally ingesting the
3 drug(s). Any positive result that registers over the established laboratory cut off level shall
4 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
5 to revoke probation against Respondent's optometric license.

6 Respondent also understands and agrees that any positive result that registers over the
7 established laboratory cut off level shall be reported to each of Respondent's employers.

8 17. BIOLOGICAL FLUID TESTING

9 Respondent, at his expense, shall participate in random testing, including but not limited to
10 biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug
11 screening program approved by the Board. The length of time shall be for the entire probation
12 period. The Respondent will be randomly drug tested at the frequency outlined in Uniform
13 Standards for Substance Abuse #4.

14 Respondent shall make daily contact to determine if he is required to submit a specimen for
15 testing, including weekends and holidays, at a lab approved by the Board. Board representatives
16 may also appear unannounced, at any time to collect a specimen. All collections will be
17 observed.

18 At all times Respondent shall fully cooperate with the Board or any of its representatives,
19 and shall, when directed, appear for testing as requested and submit to such tests and samples for
20 the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All
21 alternative testing sites, due to vacation or travel outside of California, must be approved by the
22 Board prior to the vacation or travel.

23 If Respondent is unable to provide a specimen in a reasonable amount of time from the
24 request, Respondent understands that, while at the work site, any Board representative may
25 request from the supervisor, manager or director on duty to observe Respondent in a manner that
26 does not interrupt or jeopardize patient care in any manner until such time Respondent provides a
27 specimen acceptable to the Board.

28 If Respondent tests positive for a prohibited substance per his probationary order,


1 Respondent's license shall be automatically suspended. The Board will contact the Respondent
2 and his employers, supervisors, managers, work site monitors, and contractors and notify them
3 that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board
4 may contact the specimen collector, laboratory, Respondent, treating physician, treatment
5 provider and support group facilitators to determine whether the positive test is in fact evidence of
6 prohibited use. If the Board determines the positive test is not evidence of prohibited use, the
7 Board shall immediately reinstate the license and inform the Respondent and others previously
8 contacted, that the license is no longer suspended.

9 Failure to submit to testing on the day requested, or appear as requested by any Board
10 representative for testing, as directed, shall constitute a violation of probation and shall result in
11 the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist
12 license.

13 ACCEPTANCE

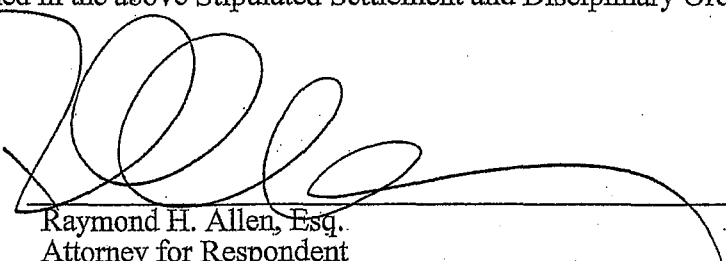
14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, Raymond H. Allen. I understand the stipulation and the effect it
16 will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary
17 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
18 of the State Board of Optometry.

19
20 DATED: 8/6/14

21 
ALFRED LEGRID APPELGARTH
Respondent

22 I have read and fully discussed with Respondent Alfred Legrid Applegarth the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content.

25
26 DATED: 2/5/2014

27 
Raymond H. Allen, Esq.
Attorney for Respondent

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ENDORSEMENT

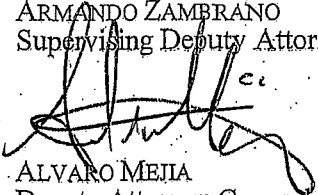
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the State Board of Optometry.

Dated:

March 3, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General


ALVARO MEJIA
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2012506393
51433697.doc

Exhibit A

Accusation No. CC 2011 114

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 ALVARO MEJIA

Deputy Attorney General
4 State Bar No. 216956
300 So. Spring Street, Suite 1702
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Telephone: (213) 897-0083
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC 2011 114

12 **ALFRED LEGRID APPEGARTH**
127 Casa Street
13 San Luis Obispo, CA 93401

A C C U S A T I O N

14 Optometrist License No. 7714

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
20 as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about September 12, 1983, the State Board of Optometry ("Board") issued
22 Optometrist License No. 7714 to Alfred Legrid Applegarth ("Respondent"). The Optometrist
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on November 30, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Code section 3090 states, in pertinent part:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

7. Code section 3110 states, in pertinent part:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(k) Conviction of a felony or of any offense substantially related to the qualifications, requirements, and duties of an optometrist, in which event the record of the conviction shall be admissible evidence thereof.

"(1) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1517 states, in pertinent part:

"For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare."

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1 SECOND CAUSE FOR DISCIPLINE

2 (Dangerous Use of Alcohol and/or Drugs)


3 11. Respondent is subject to disciplinary action under Code section 3110, subdivision (l),
4 in that on or about March 20, 2010 Respondent used alcoholic beverages and a drug to an extent
5 or in a manner dangerous or injurious to himself, another person, or the public, when he operated
6 a vehicle while under the influence of alcohol, by having 0.19% of alcohol in his blood, and a
7 drug, to wit, Ambien, and under their combined influence. Complainant refers to and by this
8 reference incorporates, the allegation set forth above in paragraph 10, as though set forth fully.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board issue a decision:

- 12 1. Revoking or suspending Optometrist License No. 7714, issued to Alfred Legrid
13 Applegarth;
14 2. Ordering Alfred Legrid Applegarth to pay the Board the reasonable costs of the
15 investigation and enforcement of this case, pursuant to section 125.3; and
16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: April 3, 2013

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20 MONA MAGGIO
21 Executive Officer
22 State Board of Optometry
23 Department of Consumer Affairs
24 State of California
25 Complainant

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27 DOJ Matter ID: LA2012506393
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